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In the Supreme Court of the United States

OCTOBER TERM, 1961

PETER YING AND WONG CHAI LIANG, PETITIONERS

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 23-29) is not yet reported. The opinion of the district court (Pet. App. 31-34) is reported at 180 F. Supp. 618.

JURISDICTION

The judgment of the court of appeals was entered on April 27, 1961 (Pet. App. 30). A petition for rehearing was denied on June 2, 1961. On September 1, 1961, Mr. Justice Black extended the time for filing a

petition for a writ of certiorari to September 11, 1961, and the petition was filed on September 1, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a warrant of deportation must specify the place to which an alien is to be deported when a subsequent written notice clearly apprises the alien of the place to which he is to be sent.

2. Whether an alien may be deported to Hong Kong under Section 243(a) of the Immigration and Nationality Act.

STATUTE AND REGULATIONS INVOLVED

Section 243(a) of the Immigration and Nationality Act, 8 U.S.C. 1253(a), and 8 C.F.R. 243 are printed in the Appendix, *infra*, pp. 10-12.

STATEMENT

Petitioners, natives of China, entered the United States from Hong Kong as non-immigrant crewmen and overstayed their shore leave. Following hearings, unchallenged as to their regularity, petitioners were ordered to be deported (R. 2).[1] The warrants of deportation, issued July 17, 1958, as to Liang, and April 30, 1959, as to Ying, did not specify the country to which each alien was to be deported (R. 6-7, 9-10).[2]

On September 2, 1959, petitioner Liang was notified by the district director that he should report on Sep-

[1] "R." refers to the Joint Appendix in the court of appeals, on file with this Court.

[2] Liang's wife and daughter resided in Hong Kong, and Ying had lived there for years (R. 11-13). Both petitioners had declined to specify the country to which their deportations should be directed (R. 7, 10).

tember 17, 1959, for deportation to Hong Kong (R. 8).[3] On October 9, 1959, petitioner Ying received a formal notice that Hong Kong had been designated as the place of deportation and that he should appear on October 21, 1959, for deportation on the following day (R. 4-5).

Prior to the issuance of the notices, the British Consul General in San Francisco had advised the Attorney General that Hong Kong, a British Crown Colony, had agreed to accept each petitioner as a deportee (R. 13).

On October 17, 1959, petitioners brought an action in the District Court for the District of Columbia for a declaratory judgment, challenging their deportation on the grounds, (1) that the deportation warrants failed to designate the country of deportation, and (2) that Hong Kong, the country designated in the notices, is not a "country" within the meaning of Section 243(a) of the Immigration and Nationality Act. On cross-motions for summary judgment, the district court granted summary judgment for respondent (R. 17-18).

The court of appeals affirmed, ruling that, since neither the statute nor regulations require that a deportation warrant specify the country to which an alien is to be deported, and since the Attorney General determines the country of deportation after the final order of deportation, the country of deportation could not be stated in such warrant (Pet. App. 25-27). The

[3] These facts appear in a letter written to Liang in care of his attorney. The complaint sets forth that a notice on October 9, 1959, informed Liang that Hong Kong was the place of deportation and that he was required to report on November 19, 1959 (R. 2).

court further held that the notice given to each petitioner of the country to which he was to be deported was sufficient and in ample time to protect any of petitioners' claimed rights or privileges (Pet. App. 27). The court also held that a "country" within the meaning of the Act includes a part of a larger international unit, and that Hong Kong so qualified as a country (Pet. App. 26-29).

ARGUMENT

1. Petitioners claim that they may not be deported because the deportation warrants do not specify the country to which they are to be deported (Pet. 8-15). This same contention was before the Court recently in a petition for certiorari in *Cheng Fu Sheng* v. *Rogers*, certiorari denied, 364 U.S. 891, No. 393, O.T. 1960. Petitioners do not deny that they each received reasonable notice of the intention of the Attorney General to deport them to Hong Kong, and they do not object to the orders of deportation. But they contend that the requirement that the country of deportation be specified in a warrant is a statutory and regulatory prerequisite to deportation and has been perpetuated by administrative practice of long standing. They further argue that Congress, by its approval of the requirement during its consideration of the Immigration and Nationality Act of 1952, in effect barred the Attorney General from changing the requirement administratively.

Section 242 of the Immigration and Nationality Act, 8 U.S.C. 1252, provides that, after a special inquiry officer has conducted a hearing and found an alien

deportable, an order of deportation shall be issued. If no appeal is taken, this order becomes final. 8 C.F.R. 242.20. The regulations provide for a warrant of deportation to be "based upon the final order of deportation." 8 C.F.R. 243.1(a), App., *infra*, p. 11. Neither the statute nor the regulations requires that the country of deportation be named either in the deportation warrant (*Kokkosis* v. *Esperdy*, 191 F. Supp. 765 (S.D.N.Y.)) or in the order of deportation (*Lozos* v. *Landon*, 235 F.2d 581, 583 (C.A. 9)).

Section 243(a) of the Act, 8 U.S.C. 1253(a), App., *infra*, pp. 10-11, designates nine alternative places to which the alien may be sent. Deportation may be directed to the country selected by the alien, if that country is willing to accept him. The other alternative locations are selected by the Attorney General, who has delegated this power to the district directors of the Immigration and Naturalization Service. 8 C.F.R. 243.1(b), App., *infra*, pp. 11-12. The final determination as to the place of deportation is now often deferred until after the country chosen is consulted as to its willingness to accept the deportee. As a result, the place to which the alien is to be deported may be unknown at the time of the issuance of the order of deportation or the warrant of deportation.

Congress has delegated the method of effectuating the processes of deportation to the Attorney General. Section 103(a) of the Act, 8 U.S.C. 1103(a), empowers him to "establish such regulations; prescribe such forms of bond, reports, entries, and other papers; * * * * and perform such other acts as he deems neces-

sary for carrying out his authority under the provisions of this [Act]." Section 242(c), 8 U.S.C. 1252(c), gives him the power to effectuate the alien's departure. Under this grant of power, he may adopt the practice of designating the country of deportation in a separate notice, rather than in a deportation warrant. Clearly it is not unreasonable for him to conclude, even in the light of prior administrative practices under earlier immigration acts,[4] that the present procedure is best suited to carry out the authority granted under the present Act. Cf. *Carlson* v. *Landon*, 342 U.S. 524, 542.

There is nothing in the legislative history of the statute to indicate that Congress intended to freeze the former practice or to remove it from the realm of administrative discretion. Rather Congress showed its interest in facilitating the deportation of deportable aliens by enlarging the authority of the Attorney General to determine the country of deportation.[5] The history to which petitioners refer merely describes the

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[4] The authorities upon which petitioners principally rely were decided under Section 20 of the Immigration Act of February 20, 1907, 34 Stat. 904, which provided that a deportable alien shall "upon the warrant of the Secretary of * * * Labor, be taken into custody and deported to the country whence he came." This determination was made in the same proceeding as the issue of deportability and there were no alternative countries of destination. At that time the warrant of deportation also constituted the order of deportation. In any event, when the issue of the proper designation of the country of deportation arose, the warrants were either judicially or administratively amended. See, *e.g.*, *United States ex rel. Moore* v. *Sisson*, 206 Fed. 450 (C.A. 2); *Yee Suey* v. *Berkshire*, 232 Fed. 143 (C.A. 5), certiorari denied, 242 U.S. 639; *United States ex rel. Ng Hen* v. *Sisson*, 220 Fed. 538 (S.D. N.Y.).

[5] Section 243(a) had its origin in Section 23 of the Internal Security Act of 1950, 64 Stat. 1010. Its history reflects the conclusion stated above. H. Rep. No. 1192, 81st Cong., 1st sess., pp. 4-7; S. Rep. No. 2369, 81st Cong., 2d sess., pp. 14-15.

deportation practice and does not indicate that a warrant must state the country of deportation.[6]

When, as here, a determination has been reached that the alien will be sent to a particular country, he is given notice of the country to which he is to be deported. So long as the hearing is fair and the alien reasonably informed of the place of deportation, he is not deprived of his liberty without due process of law or otherwise prejudiced by the absence of the specification of the place of deportation in the warrant. *Kokkosis* v. *Esperdy*, *supra*; see *Lazos* v. *Landon*, *supra*, 235 F. 2d at 583.

2. Petitioners, who came to the United States directly from Hong Kong, and do not claim any right to remain here, contend that Hong Kong cannot be considered a country for the purposes of Section 243 (a) because it is not a state but merely a political and territorial subdivision of the United Kingdom (Pet. 15-19). They assert, in effect, that they may be deported to the United Kingdom, but not to any of its parts.

This Court has said that in immigration legislation the term "country" is not a technical or artificial one, and the sense in which it is used must be determined by reference to the purpose of the legislation. *Barut* v. *Chicago Portrait Co.*, 285 U.S. 1, 6-7. The general purpose of the deportation statute is to remove from the country aliens who are here unlawfully. Once this determination has been made, the various places to which the alien may be sent under Section 243(a)

[6] See S. Rep. No. 1515, 81st Cong., 2d sess., pp. 628-629.

of the Act are primarily countries with which the alien has had some contact. The provision in the statute itself for nine alternatives, as well as the general congressional policy to facilitate deportation, evidences an intention on the part of Congress to prevent any frustration of deportation by reason of a lack of statutory authority to deport to certain areas. See *Chan Chuen* v. *Esperdy*, 285 F. 2d 353 (C.A. 2).

In light of this purpose, the word "country" as used in the Act requires only that the place to which the alien is to be deported be a defined social, geographical or political entity possessing a government with authority to accept or reject the alien. See *Rogers* v. *Cheng Fu Sheng*, 280 F. 2d 663, certiorari denied, 364 U.S. 891; *Chao-Ling Wang* v. *Pilliod*, 285 F. 2d 517 (C.A. 7); *Liang* v. *United States Department of Justice*, 290 F. 2d 614, 617 (C.A. 9). Thus, in concluding that Hong Kong, a British Crown Colony, was a country within the meaning of the statutes, the court below found it unnecessary "to determine the precise distribution of political power between Hong Kong's local and partially autonomous government and that of the United Kingdom. Suffice it to say that Hong Kong has authority to determine whether it will accept a deported alien from the United States" (Pet. App. 28). Accord, *Chan Chuen* v. *Esperdy*, 285 F. 2d 353 (C.A. 2).

Moreover, petitioner's contention would be groundless, even if Hong Kong were not a "country". Section 243(a) gives the Attorney General authority to deport an alien to any country "willing to accept such alien into its territory," and does not require that

the country be willing to accept the alien into all of its territory. Petitioners are willing to be deported to the "country" known as the United Kingdom. But the act does not use "country" as a word of limitation. Rather, Section 243 itself recognizes that the designation may be a territory or an island. A designation of a particular division of the "country" satisfies its requirements.

Since the political status of Hong Kong has not changed from the time of petitioner's departure, Hong Kong, to which petitioners are being deported, is the same "country" from which they came.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1961.

APPENDIX

Section 243(a) of the Immigration and Nationality Act, 8 U.S.C. 1253(a) provides:

> The deportation of an alien in the United States provided for in this chapter, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent thereto or adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original inquiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General or the alien within three months following the date of the original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be

directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either—

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or

(7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

8 C.F.R. § 243 provides in pertinent part:

§ 243.1 *Issuance of warrants of deportation; country to which alien shall be deported; cost of detention; care and attention of alien.* (a) *Issuance.* A warrant of deportation shall be based upon the final order of deportation and shall be issued by a district director or an immigration officer acting for him.

(b) *Determination of place and cost of deportation, and necessity for attendants.* District directors shall exercise the authority contained in section 243 of the Immigration and Nationality Act to designate the country to which, and at whose

expense an alien in the United States shall be deported, and to determine when an alien's mental or physical condition requires the employment of a person to accompany the alien.

* * * * *

§ 243.3 *Execution of warrants of deportation*—(a) *Taking alien into custody.* Upon the issuance of a warrant of deportation or as soon thereafter as the circumstances of the case require, the alien, if not in the physical custody of the Service, shall be taken into such custody under the authority of such warrant of deportation and deported.

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